United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLANT

Affidavit

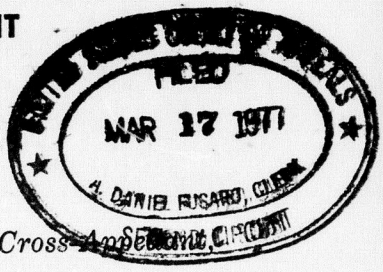
76-6114
76-6119

To be argued by
THOMAS H. BELOTE

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket Nos. 76-6114
76-6119



CHIN LAU,
Plaintiff-Appellee-Cross-Appellant,

—v.—

MAURICE F. KILEY, District Director of the New York District, Immigration and Naturalization Service, United States Department of Justice,
Defendant-Appellant-Cross-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR DEFENDANTS-APPELLANTS

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TABLE OF CASES

Issues Presented

1. Whether Section 101(b)(1)(D) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(D) violates due process of law by excluding an illegitimate child from the preferential immigration status accorded by the Act to the children of lawful permanent resident aliens.

2. Whether the District Court erred in finding that the legal establishment of paternity was unnecessary under Article 15 of the Marriage Law of the People's Republic of China in order to determine the legitimacy of a child born out of wedlock.

3. Whether the District Court erred in substituting a "fact finding procedure" to determine eligibility under Section 101(b)(1)(D) instead determining, as a matter of law, whether the visa petition beneficiary had been legitimated under the law of the father's residence or domicile.

Statutes

Sections 101(b)(1) of the Immigration and Nationality Act of 1952, 66 Stat. 171, as amended 8 U.S.C. (and Supp. V) 1101(b)(1) provides:

> (1) The term "child" means an unmarried person under twenty-one years of age who is—
>
> (A) a legitimate child; or
>
> (B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of the stepchild occurred; or
>
> (C) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation.
>
> (D) an illegitimate child, by through whom, or on whose behalf a status, privilege or benefit is sought by virtue of the relationship of the child to its natural mother.
>
> (E) a child adopted while under the age of fourteen years if the child has thereafter been in the legal custody of, and has resided with, the adopting parent or parents for at least two years: *Provided*, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privlege, or status under this chapter.

(F) a child, under the age of fourteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 210(b), who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who personally saw and observed the child prior to or during adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence: *Provided*, That the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States: *Provided further*, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act.

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket Nos. 76-6114
76-6119

CHIN LAU,
Plaintiff-Appellee-Cross-Appellant,

—v.—

MAURICE F. KILEY, District Director of the New York District, Immigration and Naturalization Service, United States Department of Justice,
Defendant-Appellant-Cross-Appellee.

BRIEF FOR DEFENDANTS-APPELLANTS

Preliminary Statement

This action was commenced on March 13, 1975. The complaint essentially sought declaratory relief that the decisions of the defendant District Director and the Board of Immigration Appeals (the "Board"), which denied the visa petition for preference status submitted by the plainitff, Chin Lau ("Lau"), on behalf of his alleged son, Kim Kok Lau, on the ground that Kim Kok Lau was not a "child" as defined by Section 101(b)(1) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1101(b)(1), and therefore was not entitled to the preference status sought. The complaint demanded judgment that the defendant and the Board of Immigra-

tion Appeals erred as a matter of law in holding that Kim Kok Lau was not a child within the definition of 8 U.S.C. § 1101(b)(1) or, alternatively, that Section 101(b)(1)(D) of the Act, 8 U.S.C. § 1101(b)(1)(D) denied Lau equal protection and due process of law in violation of the Fifth Amendment of the United States Constitution (A. 1).[1] Subsequently issue was joined (A. 16) and on December 11, 1975 the defendant-appellant (hereinafter the "Service") moved for summary judgment pursuant to Rule 56(a) of the Federal Rules of Civil Procedure contending that no genuine issue of fact existed and that the Service was entitled to judgment as a matter of law. Lau cross-moved for summary judgment also contending that they were entitled to judgment as a matter of law.

On March 25, 1976 the Honorable Lloyd F. MacMahon, United States District Judge for the Southern District of New York, filed an opinion which granted Lau judgment against the Service and ordered that the matter be remanded to the Board of Immigration Appeals for reconsideration of Lau's visa petition. (A. 187-201). On May 20, 1976 Judge MacMahon filed an order embodying his decision, whcih granted Lau judgment against the Service. (A. 202). The Service filed their notice of appeal from the District Court's opinion and order on July 23, 1976. Lau has cross-appealed from the District Court's decision.

Statement of Facts

Lau is a male, native and citizen of China, who was admitted to the United States on May 19, 1966 as a lawful permanent resident alien (A. 26). On September

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[1] References preceded by the letter "A." are to the pages of the Appendix filed by the Defendant-Appellant-Cross-Appellee.

13, 1973 the plaintiff submitted to the Service's district office in New York a visa petition, Form I-130 on behalf of another alien, Kim Kok Lau, and other documentary evidence in support of that petition (A. 35).[2] In the visa petition and supporting documents Lau alleged that while he was residing in China prior to his admission to the United States, and in or about 1947, he began cohabiting with a woman, Chin Dung You. He alleged that he did not marry, and has never been married to Chin Dung You, but as a result of their relationship two children were born to them. Lau alleged that the beneficiary of the above-mentioned visa petition, Kim Kok Lau, is his natural son having been born out of wedlock to Lau and Chin Dung You in Koksan, Kwangtung, China on June 16, 1952. As a result of the above Lau maintained that Kim Kok Lau was entitled to a preference status under Section 203(a)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1152(a)(2) as unmarried son of an alien lawfully admitted to the United States as a permanent resident.

The Immigration and Nationality Act of 1952, 66 Stat. 166, as amended, 8 U.S.C. §§ 1101 *et seq.*, grants special preference immigration status to aliens who, within the meaning of the Act, qualify as the "spouses, unmarried sons or unmarried daughters" of an alien lawfully admitted for permanent residence. Section 203(a)(2) of the Act, 8 U.S.C. § 1153(a)(2).[3] Certain aliens

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[2] The filing of this petition occurred 21 years after Kim Kok Lau's birth and seven years after Lau's admission to the United States.

[3] The terms "sons" and "daughters" are not defined in the Act. In order to qualify as a "son" or "daughter" within the meaning of this section an alien, who is the beneficiary of a visa petition must once have qualified as a "child" of the petitioning

[Footnote continued on following page]

who satisfy this relationship may obtain a preference with respect to the allocation of visas described in Section 203(a)(2) of the Act, 8 U.S.C. § 1153(a)(2), and may secure an immigrant visa without obtaining a labor certification (Section 212(a)(14) of the Act, 8 U.S.C. § 1182(a)(14)).

Section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1), defines a "child" as an unmarried person under twenty-one years of age who meets certain specified criteria. Included within this definition, and thus accorded a status that facilitates their entry into this country, are a legitimate or legitimated child,[4] a stepchild,[5] an adopted child,[6] and an illegitimate child seeking preference by virtue of his relationship to his natural mother.[7] The definition does not extend to an illegitimate child seeking preference by virtue of his relationship to his natural father. Similarly, the natural father of an illegitimate child who is either a United States citizen or permanent resident alien is not entitled to preferential treatment as a "parent".

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resident alien as defined in Section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1). See, *Matter of Coker*, Interim Decision #2255 (B. I.A. 1974); see *Nazareno* v. *Attorney General*, 512 F.2d 936 (D.C. Cir. 1975), *cert. denied*, 423 U.S. 832.

[4] 8 U.S.C. § 1101(b)(1)(A) and (C). The legitimation may occur either under the law of the child's residence or domicile or the father's residence or domicile but must take place "before the child reaches the age of eighteen years" and at a time when "the child is in the legal custody of the legitimating parent or parents". 8 U.S.C. § 1101(b)(1)(C).

[5] 8 U.S.C. § 1101(b)(1)(B). The child must not have "reached the age of eighteen years at the time the marriage creating the status of stepchild occurred". *Ibid.*

[6] 8 U.S.C. § 1101(b)(1)(E). The child must have been adopted before his fourteenth birthday and must thereafter have "been in the legal custody of, and has resided with, the adopting parent or parents for at least two years". *Ibid.*

[7] 8 U.S.C. § 1101(b)(1)(D).

The approval of that visa petition by the Service would have granted Kim Kok Lau the privilege of being considered a "second preference" prospective immigrant, and pursuant to the numerical limitation on the number of immigrants permitted to enter the United States this would have afforded Kim Kok Lau a substantial benefit in terms of obtaining a priority for consideration by a United States Consulate for the issuance of an immigrant visa ahead of other aliens similarly situated. Despite this possible preferential treatment, the granting of that visa petition would not bestow upon Lau's alleged son an immigrant visa. The issuance of a visa itself is the sole responsibility of the Department of State through its consular officers, and even if a visa petition is approved by the Service the consulate at which an alien applies for an immigrant visa must still pass upon the prospective alien's eligibility before a visa can be issued. Alternatively, the denial of the visa petition submitted by Lau on behalf of his alleged son would not bar the latter from entering the United States. Kim Kok Lau might attempt to qualify for and obtain another form of preference status such as a preference based upon labor skills, or he could apply for an immigrant visa as a "non-preference" prospective immigrant. In the latter case he would be placed in a position equal to other prospective immigrants seeking to enter the United States who also lack the essential characteristics which might qualify them for the preferred positions under Section 203 of the Act, 8 U.S.C. § 1153.

On February 28, 1974 the Service rendered a decision on the visa petition submitted by Lau on behalf of Kim Kok Lau. (A. 38-39). Without determining whether a blood relationship existed district office found that even if the beneficiary of the visa petition was Lau's natural offspring Kim Kok Lau was nonetheless ineligible to be granted preference status in that he had never been

Lau's legitimate or legitimated child as required by Section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1), and, therefore, the alleged son could not qualify for the immigration benefits of Section 203(a)(2) of the Act.

On appeal to the Board the Lau argued that Kim Kok Lau was his legitimate or legitimated son under the law of the People's Republic of China, and, therefore, he was statutorily eligible for consideration of his visa petition for second preference status. Specifically, Lau argued that under Article 15 of the Marriage Law of the People's Republic of China, promulgated May 1, 1950, children born out of wedlock share the same rights as children born in wedlock.[8] Therefore, he argued, Kim Kok Lau was a "child" as defined in Section 101(b)(1) of the Act, 8 U.S.C. § 1101, and eligible to qualify for preference status as his unmarried son under Section 203.

On October 23, 1974 the Board rendered its decision dismissing the appeal and affirming the decision of the District Director (A. 40-43). Without determining whether in fact a blood relationship and natural filiation existed between the alien-petitioner and the alleged son,

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[8] Article 15 of the Marriage Law of the People's Republic of China, promulgated May 1, 1950. Provides:

> Children born out of wedlock shall enjoy the same rights as children born in lawful wedlock. No person shall be allowed to harm or to discriminate against them.
>
> Where the paternity of a child born out of wedlock is legally established by the mother of the child or by other witnesses or by other material evidence, the identified father must bear the whole or part of the cost of maintenance and education of the child until the age of 18.
>
> With the consent of the mother, the natural father may have the custody of the child.
>
> With regard to the maintenance of a child born out of wedlock, in case its mother marries, the provisions of Article 22 shall apply.

the Board stated that Lau had failed in his burden of proof to demonstrate that Kim Kok Lau was statutorily eligible to be granted the preference classification which was being sought pursuant to Section 203(a)(2) of the Act. The Board rejected Lau's argument that any child born out of wedlock in the People's Republic of China is a legitimate child and therefore eligible for preference status under the Act. The Board, examining Article 15 of the Marriage Law, in toto, determined that in order that a child born out of wedlock be considered a "child" "for immigration purposes" there must be some indication that the paternity of that child had been "legally established" in compliance with Article 15 of the Marriage Law.

In dismissing the appeal the Board stated: (a) in order to qualify as a "son" for preference purposes under Section 203(a)(2) of the Act, 8 U.S.C. § 1153(a)(2), the beneficiary of a visa petition must once have qualified as a "child" of the petitioning person under Section 101 (b)(1) of the Act, 8 U.S.C. § 1101(b)(1), and that the burden of establishing the existence of that relationship rests upon the petitioner; (b) that there was no evidence in the record indicating that the paternity of Kim Kok Lau was ever "legally established" in compliance with Article 15 of the Marriage Law of the People's Republic of China, and therefore he was not Lau's legitimate or legitimated son under the law of the child's residence or domicile, i.e., the People's Republic of China; (c) that in absence of such evidence, Kim Kok Lau did not qualify for preference status as Lau's son under Section 203(a)(2) of the Act; (d) that the Board had no authority to consider the constitutionality of the statutes they administer and that they could not construe Section 101(b)(1)(D) of the Act to include an illegitimate child who claims a preference status through its natural father.

On March 13, 1975 Lau commenced this action in the District Court for the Southern District of New York challenging the Board's decision. Subsequently on cross-motions for summary judgment the Honorable Lloyd F. MacMahon, United States District Judge, rendered a decision remanding this matter to the Board. In his opinion Judge MacMahon discussed the difference between the establishment of paternity and legitimation. The Court stated that the second paragraph of Article 15 related to paternity suits when the putative father denies the relationship. Judge MacMahon found therefore that the Board erred in requiring that paternity be "legally established" under Article 15 in order to determine the legitimacy of a child born out of wedlock. The Court also rejected Lau's argument that the first paragraph of Article 15 makes all children legitimate for immigration purposes. The Court noted that Chinese law retains a distinction between children born out of wedlock and those born in lawful wedlock, but apparently does not prescribe a method of legitimation for the former group of children.

The Court, confronted with a unique situation in which the terms "legitimate" and "illegitimate" children are meaningless in the context of the Chinese legal system, looked to a policy underlying the Act, reunification of families, and determined that, for the purpose of granting preference status, Lau could establish the requisite parent-child relationship as a matter of fact. Judge MacMahon therefore remanded the matter to the Board for this fact-finding process.

Both parties to this action have appealed the District Court's determination of the legitimacy issue in this case. In addition Lau challenges the constitutionality of Section 101(b)(1)(D) in that it gives immigration privileges to the mother of an illegitimate child but does

not provide the same privileges to the father of an illegitimate child.[9]

ARGUMENT

POINT I

Congress' deliberate decision, to exclude from the definition of child in Section 101(b)(1)(D) an illegitimate child who seeks immigration benefits through his unwed father, represents an act of national sovereignty, not reviewable by this Court.

In adopting the Immigration and Nationality Act of 1952, 66 Stat. 166, as amended, 8 U.S.C. 1101 *et seq.*., Congress acted in accordance with the ancient principle of international law that a sovereign nation has the inherent power to exclude or admit foreigners on such terms and conditions as it may prescribe. See *Kleindienst* v. *Mandel*, 408 U.S. 753, 766 (1972).[10] This firmly-established principle, dating from Roman times,[11] received recognition during the Constitutional Convention [12] and

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[9] In view of the Court's ruling on the Chinese law issue the Court found it unnecessary to reach this issue below.

[10] See also *Nishimura Ekiu* v. *United States*, 142 U.S. 651, 659(1892); *Harisiades* v. *Shaughnessy*, 342 U.S. 580, 596 (1952) (Frankfurter, *J.*, concurring); Bar. *International Law* 708, n. 2 (Gillespie ed. 1883).

[11] Borchard, *Diplomatic Protection of Citizens Abroad* 33, 44-48 (1915).

[12] See 3 *Papers of James Madison* 1277 (1840), where Madison reports Gouverneur Morris' observation during the debates that "every society, from a great nation down to a club, ha[s] the right of declaring the conditions on which new members should be admitted." Article I, Section 9, Clause 1, of the Constitution itself is an implicit recognition of Congress' authority to regulate immigration. In addition, Article III of the Jay Treaty of 1794, 8 Stat. 116 117, provided that British and American subjects could freely cross the Canadian border. See *Karnuth* v. *United States*, 279 U.S. 231 (1929).

has continued to be an important postulate in the foreign relations of the United States and the other members of the international community.[13]

Nearly a century ago the United States Supreme Court recognized the power to admit or exclude aliens as inherent in sovereignty, necessary for maintaining normal international relations and defending the country against foreign encroachment—a power to be exercised exclusively by the political branches of government and not to be "granted away or restrained on behalf of any one." *The Chinese Exclusion Case*, 130 U.S. 581, 609 (1889). "[O]ver no conceivable subject is the legislative power of Congress more complete than it is over" the admission of aliens. *Oceanic Navigation Co.* v. *Stranahan*, 214 U.S. 320, 339 (1909). Encompassed within Congress' "plenary power to make rules for the admission of aliens" (*Boutilier* v. *Immigration and Naturalization Service*, 387 U.S. 118, 123 (1967) is a comparably broad power to "to fix the conditions under which aliens are to be permitted to enter * * * this country." *Flemming* v. *Nestor*, 363 U.S. 603, 616 (1960). Whether a particular alien or class of aliens may be allowed to enter the United States is "a matter wholly political in its character" (*Lem Moon Sing* v. *United States*, 158 U.S. 538, 548) (1895), "a matter of political outlook and national self-interest" (*Harisiades* v. *Shaughnessy*, *supra*, 342 U.S. at 596, Frankfurter, J., concurring), and a matter "depend[ent] on the congressional will" (*Shaughnessy* v. *Mezei*, 345 U.S. 206, 216 (1953).

Hence, while distinctions drawn by Congress might be constitutionally suspect if embodied in domestic

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[13] See, *e.g.*, Convention between the United States of America and other American Republics regarding the status of aliens, Article I, 46 Stat. 2753, 2754; Constitution of the Intergovernmental Committee for European Migration, 6 U.S.T. 603, 604 (1955); *Hines* v. *Davidowitz*, 312 U.S. 52 (1941).

legislation, the courts have held without exception that Congress may employ whatever criteria it deems relevant in determining the status to accord various classes of aliens seeking to enter the United States. See *Harisiades* v. *Shaughnessy*, *supra*, 342 U.S. at 397 (Frankfurther, J., concurring). Aliens may therefore be denied preferential admission, or excluded from this country altogether, on the basis of race (see, *e.g.*, *The Chinese Exclusion Case*, *supra*; *Fong Yue Ting* v. *United States*, 149 U.S. 698 (1893)) or other "immutable" characteristics such as age (*Nazareno* v. *Attorney General*, 512 F.2d 936 (D.C. Cir. 1975), certiorari denied, 423 U.S. 832) and national origin (*Noel* v. *Chapman*, 508 F.2d 1023 (2d Cir.), certiorari denied, 423 U.S. 824 (1975); *Dunn* v. *Immigration and Naturalization Service*, 499 F.2d 856 (9th Cir. 1974), certiorari denied, 419 U.S. 1106 (1975), or they may be barred because of their sexual proclivities (*Boutilier* v. *Immigration and Naturalization Service*, *supra*) or political beliefs (*Kleindienst* v. *Mandel*, *supra*). Indeed, because the essential characteristic of immigration legislation is the choice of which foreigners may enter the United States and which may not, "every limitation in the immigration laws is to some extent discriminatory. But the authorities tell us that no affected alien can question the reasonableness or fairness of such discriminatory measures." 1 Gordon and Rosenfield, *Immigration Law and Procedure* § 2.2a (1976). And "no successful challenge ever has been made to any exercise of legislative power in this field." *Ibid.*

No alien has any constitutional right to immigrate to the United States. The congressional decision whether or to whom to extend such a valuable privilege, like the decisions whether to extend formal recognition to, enter into a treaty with, or declare war against a foreign country, is not a subject of judicial concern. With respect to the extent of congressional prerogatives over the admission and exclusion of aliens, there is "not merely 'a page

of history,' *New York Trust Co.* v. *Eisner*, 256 U.S. 345, 349, but a whole volume." *Galvan* v. *Press*, 347 U.S. 522, 531 (1954). The United States Supreme Court has consistently deferred to the judgment of the legislative and political branches in regard to the type of aliens who should be permitted to enjoy this nation's hospitality.[14] In sum, "that the formation of [policies pertaining to the entry of aliens and their right to remain in this country] is entrusted exclusively to Congress has become about as firmly imbedded in the legislative and judicial tissues of our body politic as any aspect of our government." *Galvan* v. *Press*, *supra*, 347 U.S. at 531.

The principles outlined above are controlling here. The language and legislative history of Section 101(b)(1)(D) demonstrate, that this statutory provision represents Congress' deliberate judgment of the types of aliens who should be accorded immigration benefits. The exclusion of the relationship of natural father and illegitimate child from the preferred status granted many other

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[14] See *The Chinese Exclusion Case*, 130 U.S. 581, 609; *Nishimura Ekiu* v. *United States*, 142 U.S. 651, 659; *Fong Yue Ting* v. *United States*, 149 U.S. 698, 713; *Lem Moon Sing* v. *United States*, 158 U.S. 538; *Wong Wing* v. *United States*, 163 U.S. 228 237 (1896); *Li Sing* v. *United States*, 180 U.S. 486, 495 (1901); *Fok Yung Yo* v. *United States*, 185 U.S. 296, 302 (1902); *The Japanese Immigrant Case*, 189 U.S. 86, 97 (1903); *United States ex rel. Turner* v. *Williams*, 194 U.S. 279 (1904); *United States* v. *Ju Toy*, 198 U.S. 253, 261 (1905); *Keller* v. *United States*, 213 U.S. 138, 143-144 (1909); *Oceanic Navigation Co.* v. *Stranahan*, 214 U.S. 320; *Low Wah Suey* v. *Backus*, 225 U.S. 460, 467-468 (1912); *Zakonaite* v. *Wolf*, 226 U.S. 272, 275 (1912); *Tiaco* v. *Forbes*, 228 U.S. 549, 556-557 (1913); *Bugajewitz* v. *Adams*, 228 U.S. 585, 591 (1913); *Ng Fung Ho* v. *White*, 259 U.S. 276, 280 (1922); *Mahler* v. *Eby*, 264 U.S. 32, 40 (1924); *United States ex rel. Volpe* v. *Smith*, 289 U.S. 422, 425 (1933); *Hines* v. *Davidowitz*, 312 U.S. 52 (1941); *United States ex rel. Knauff* v. *Shaughnessy*, 338 U.S. 537, 542-543 (1950); *Harisiades* v. *Shaughnessy*, 342 U.S. 580; *Shaughnessy* v. *Mezei*, 345 U.S. 206, 210; *Galvan* v. *Press*, 347 U.S. 522; *Boutilier* v. *Immigration and Naturalization Services*, 387 U.S. 118; *Kleindienst* v. *Mandel*, 408 U.S. 753, 765-770.

immediate relaitves of lawful permanent residents is a clear manifestation of immigration policy. The wisdom of that policy decision is therefore not reviewable in the courts.

The terms "child" and "parent" in the Immigration and Nationality Act have been carefully drawn to eliminate large groups of persons whom one would normally expect to occupy that status. A "child" must be unmarried and under the age of twenty-one. If a legitimated child or stepchild, the legitimation or marriage creating that status must have occurred before the age of eighteen, and if an adopted child the adoption must have occurred before the age of fourteen. The legitimated and adopted child must also be in the legal custody of his parents and, in the case of an adopted child, he must have lived in their custody for a minimum of two years,[15] Similarly, the term "child" includes "an illegitimate child, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child *to its natural mother.*" 8 U.S.C. 1101(b)(1)(D) (emphasis added). In light of this unambiguous language, Congress' intention is clear and there can be no doubt about which aliens are entitled to preferential immigration status.

The legislative history of Section 101(b)(1)(D) confirms that this design was deliberate. The precursor of Section 101(b), Section 4(a) of the Immigration Act of 1924, exempted from numerical quota restricitons any "immigrant who [was] the unmarried child under 18 years of age" of a United States citizen. 43 Stat. 153, 155.[16] Although the definition of "child" under the 1924

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[15] The mothers and fathers of children who fail to satisfy these requirements, of course, do not qualify as "parents" under the Act. 8 U.S.C. 1101(b)(2).

[16] The age limit was raised to 21 years in 1932. 47 Stat. 656.

Act did not expressly distinguish between legitimates and illegitimates, the statute was construed to provide nonquota status to alien illegitimate children only if they sought admission to the United States through their citizen mothers. See *Matter of A—*, 5 I. & N. Dec. 272, 273 (B.I.A.), reversed, 5 I. & N. Dec. 283 (A.G.); Kansas, *U.S. Immigration Exclusion and Deportation* 33 (2d ed. 1940).

As originally enacted in 1952, however, Section 101 (b) of the Immigration and Nationality Act defined "child" as an unmarried legitimate or legitimated child or stepchild under the age of twenty-one, thus ostensibly excluding the relationship of mother and illegitimate child that had theretofore been accorded preferential status. 66 Stat. 166, 171. In a series of administrative decisions under the 1952 Act, the Attorney General and the Board of Immigration Appeals held that an illegitimate child whose alien mother had since married a United States citizen did not qualify as a "stepchild," *Matter of M—*, 5 I. & N. Dec. 120, 126 (A.G.), that an illegitimate alien child was not eligible for nonquota status based on her relationship to her citizen mother, *Matter of A—*, 5 I. & N. Dec. 272, 283-284 (A.G.), and that the mother of a citizen born out of wedlock did not qualify as a "parent." *Matter of F—*, 7 I. & N. Dec. 448 (B.I.A.).

In response to these decisions and to the Attorney General's recommendation that "the matter should be brought to the attention of Congress." *Matter of A—*, *supra*, 5 I. & N. Dec. at 284, the Act was amended in 1957 to add Section 101(b)(1)(D). This amendment was explicitly designed to "clarify the law so that the illegitimate child would *in relation to his mother* enjoy the same status under the immigration laws as a legitimate child to remove any doubt of the intent of the original drafters of the act," S. Rep. No. 1057, 85th Cong., 1st Sess. 4 (1957) (emphasis added), and was

specifically intended "to alleviate hardship and provide for a fair and humanitarian adjudication of immigration cases involving children born out of wedlock and *the mothers of such children.*" H.R. Rep. No. 1199, 85th Cong., 1st Sess. 7 (1957) (emphasis added). As explained by Senator Kennedy, a sponsor of the amendment (103 Cong. Rec. 14659 (1957) (emphasis added)):

> [The amendment] would clarify the law so that an illegitimate child would, *in relation to his mother*, enjoy the status under immigration laws as a legitimate child. It is believed that the drafters of this provision of the act did not intend to deprive an illegitimate child of the status he enjoyed under earlier law * * *.

See also 103 Cong. Rec. 15489 (1957) (remarks of Senator Eastland).[17]

Once Congress has adopted an immigration policy that a particular class of alien may not reside permanently in this country, neither the Due Process Clause nor any other constitutional provision protects a citizen or alien from the "calamity of being separated from family" (*Harisiades* v. *Shaughnessy*, *supra*, 342 U.S. at 591), and the Supreme Court has never indicated otherwise. See, *e.g.*, *Reid* v. *Immigration and Naturalization*

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[17] The 1957 amendments also changed Section 101(b)(1)(B) of the Act to provide that the statutory definition of the term "child" would include stepchildren "whether or not born out of wedlock." This amendment was passed to reverse the result in *Matter of M—*, *supra*, and to "accomplish the original intent of the section" by "mak[ing] it clear that a child born out of wedlock *in relation to its mother* may be included in the term 'stepchild' and thereby enjoy the same immigration status as other stepchildren." S. Rep. No. 1057, *supra* at 4 (emphasis added). In addition, the amendments extended preferential status to an adopted child and his parents.

Service, 420 U.S. 619 (1975) (deportation of alien parents of two citizen children); *United States ex rel. Hintopoulos* v. *Shaughnessy*, 353 U.S. 72 (1957) (deportation of alien parents of citizen child); *United States ex rel. Knauff* v. *Shaughnessy*, 338 U.S. 537 (exclusion of alien wife of citizen).[18]

The Chinese Exclusion Case, supra, 130 U.S. at 609. While a citizen or lawful permanent resident may have a privilege, protected by the Constitution, to associate freely with anyone lawfully in ths country, he may not require that the immigration policy of the United States be molded to permit the entry of an alien whose preferential admission Congress has chosen not to allow.

In sum, this case touches at the heart of Congress' heretofore unquestioned authority over the admission of aliens. Congress has the exclusive power to determine which aliens are to be welcomed and that these are matters "wholly outside the concern and the competence of the Judiciary." *Harisiades* v. *Shaughnessy, supra*, 342 U.S. at 596 (Frankfurter, J., concurring). The right to "familial association" does not carry with it the right to bring an alien into this country in ways not sanctioned by statute.

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[18] See also *Burrafato* v. *United States Department of State*, 523 F.2d 554, 555 (2d Cir. 1975), *certiorari denied*, 424 U.S. 910 (1976); *Cercantes* v. *Immigration and Naturalization Service*, 510 F.2d 89, 91 (10th Cir. 1975); *Noel* v. *Chapman*, 508 F.2d 1023, 1027-1028 (2d Cir.), *certiorari denied*, 423 U.S. 824 (1975); *Robles* v. *Immigration and Naturalization Service*, 485 F.2d 100, 102 (10th Cir. 1973); *Aalund* v. *Marshall*, 461 F.2d 710, 714 (5th Cir. 1972); *Silverman* v. *Rogers*, 437 F.2d 102 (1st Cir. 1970), *certiorari denied*, 402 U.S. 983 (1971); *Faustino* v. *Immigration and Naturalization Service*, 432 F.2d 429 (2d Cir. 1970), *cert. denied*, 401 U.S. 921 (1971); *Perdido* v. *Immigration and Naturalization Service*, 420 F.2d 1179, 1181 (5th Cir. 1969); *Mendez* v. *Major*, 340 F.2d 128, 131-132 (9th Cir. 1965); *Swartz* v. *Rogers*, 254 F.2d 338, 339 (D.C. Cir.), *cert. denied*, 357 U.S. 928 (1958).

POINT II

Section 101(b)(1) must be upheld because it has a rational basis and furthers valid objectives of the Immigration Laws.*

Assuming this Court departs from over two centuries of constitutional history and decides it has jurisdiction to review a congressional determination concerning the admissibility of aliens to this country, nevertheless the constitutionality of Section 101(b)(1)(D) must be sustained.[19]

This statutory provision is rationally related to achievement of the legislative purpose behind the special immigration preferences granted to many categories of close relatives of United States citizens and lawful permanent residents—"to keep together the family unit wherever possible" (H.R. Rep. No. 1199, *supra*, at 8)—and furthers the unquestionably legitimate goals of facilitating administrative determinations of admissibility and avoiding spurious claims.[20] See *Fiallo* v. *Levi*, *supra*.

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* In *Fiallo* v. *Levi*, 406 F. Supp. 162 (E.D.N.Y. 1975) (three judge court), *appeal pending*, (U.S. No. 75-6297) (argued December, 1975) the constitutionality of Section 101(b)(1)(D) was sustained in the face of charges identical to those presented by Lau to the District Court below.

[19] Because every decision by the federal government affecting aliens is distinctly political in character (*Hampton* v. *Mow Sun Wong*, 426 U.S. 88 (1976)), and because there is no domestic counterpart to the power of Congress to exclude, regulate, or deport aliens (*Mathews* v. *Diaz*, 426 U.S. 67 (1970)), the Supreme Court has recognized that even legislation concerning the rights of aliens lawfully in this country is "subject only to narrow judicial review." *Hampton* v. *Mow Sun Wong*, *supra*, at 101 n. 21. *A fortiori*, distinctions drawn by Congress among aliens outside the United States, if reviewable at all, deserve even greater deference.

[20] Distinctions that do not implicate fundamental constitutional interests or rest upon suspect classifications do not violate the principles of equal protection embodied in the Due Process Clause unless they are "patently arbitrary" and "utterly lacking

[Footnote continued on following page]

Congress' purpose, therefore, was not to facilitate the admission of an alien into this country because of the mere fortuity that his relative was already living here; rather, it was to grant special relief in cases of exceptional hardship to parents or children of permanent residents who had once lived with their family and whose continued separation was the result not of choice but of the restrictive immigration provisions of the Act. Hence, children, legitimate or not, who are married or over the age of twenty-one cannot qualify for the immigration preference because Congress reasonably determined that married or adult offspring do not normally reside with their parents and that the separation of such individuals from their mothers or fathers was therefore unlikely either to create an undue hardship requiring special dispensations or to have been caused by the restrictions of the Act. 8 U.S.C. 1101(b)(1)(A). By the same token, legitimated children are not entitled to preferential immigration status unless their legitimation occurred prior to their eighteenth birthday and at a time when they were in the legal custody of the legitimating parent or parents (8 U.S.C. 1101(b)(1)(C)); adopted children must have been adopted before the age of 14 and must have lived in the custody of their adopting parent or parents for at least two years (8 U.S.C. 1101(b)(1)(E)); and stepchildren must not have reached the age of eighteen at the time the marriage creating the status of stepchild occurred (8 U.S.C. 1101(b)(1)(B)).

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in national justification." *Weinberger* v. *Salfi*, 422 U.S. 749, 768 (1975) quoting from *Flemming* v. *Nestor*, 363 U.S. 603, 611 (1960). Since there is no constitutional right to enter the United States and the Supreme Court has not held sex or illegitimacy to be a suspect classification. *Kahn* v. *Shevin*, 416 U.S. 351, 355 (1974); *Mathews* v. *Lucas*, 427 U.S. 495 (1976), it is this standard against which Section 101(b)(1)(D) of the act must be examined.

In each of these situations, Congress reasonably concluded that, regardless of the existence of a *bona fide* parent-child relationship, the separation of the family members under circumstances not satisfying the statutory conditions would not be unusually harsh or inequitable and that the immigration of the alien child or parent would not bring about the family *reunification* contemplated by Section 101(b).

The definition of "child" in Section 101(b)(1)(D) is fully consistent with this statutory scheme. Congress could rationally determine that limitation of the special immigration benefits to the relationship of natural mother and illegitimate child, and denial of preferential status to the relationship of natural father and illegitimate child, would advance the goal of *reuniting* family members who would be living together but for the restrictions of the Act, while eliminating a large category of persons whose admission to this country would do nothing to further that result. A natural mother has, by definition, once been united with her illegimate child, and both reason and common experience suggest that that close relationship has continued in the vast majority of cases. No such intimacy generally exists between natural fathers and their illegitimate children, especially those fathers who have never chosen to legitimate their son or daughter.[21] Indeed, it is significant that this obvious distinction between fathers and mothers has been a feature of our immigration and naturalization law since the First Congress. 1 Stat. 103. See *Rogers* v. *Bellei*, 401 U.S. 815, 823 (1971).

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[21] Even studies favorable to the plaintiff-appellee construed that more than 86 percent of all illegitimate children who live with one of their parents reside with their mother. See *Fiallo* v. *Levi*, 406 F. Supp. 162 (E.D.N.Y. 1975) (dissenting opinion) (Weinstein, *J.*).

Faced with the alternatives of over-inclusiveness—opening the doors of this country to everyone who claims a biological relationship to a child or parent who is a citizen or lawful permanent resident of the United States, regardless of the strength of the bonds that previously existed between them—or under-inclusiveness—limiting the special immigration status to those persons whose admission is most likely to further the goal of family reunification and who are most likely to have suffered the harm that the provisions of Section 101(b) were designed to alleviate—the legislative and executive branches rationally determined that a conclusive, though imprecise, rule was the better course. This statutory classification represents a "reasonable empirical judgment [ ]" (*Mathews* v. *Lucas*, 427 U.S. 495 (1976) that the number of putative fathers who had not legitimated their illegitimate chlidren but who could make the requisite showing of a formal, pre-existing familial relationship was insufficiently large to justify adoption of a method of case-by-case adjudication that a contrary definition would have required.

Weinberger v. *Salfi*, 422 U.S. 749 (1975), supports the validity of the congressional decision. There, the Court was faced with a duration-of-relationship requirement in the Social Security Act which defined "widow" so as to exclude a surviving wife from death benefits if her marriage did not precede the wage-earner's death by at least nine months. The eligibility test was conclusive, raising an "irrefutable presumption" that any marriage entered into within the statutory period was for the purpose of obtaining survivor's benefits. Despite the fact that the legislation "swe[pt] more broadly than the evils with which [it was designed] to deal" (*id.* at 784), the Court upheld its constitutionality, finding that "Congress, its concern having reasonably been aroused by the possibility

of an abuse which it legitimately desired to avoid, could rationally have concluded both that a particular limitation or qualification would protect against its occurrence, and that the expense and other difficulties of individual determinations jutisfied the inherent imprecision of a prophylactic rule." *Id.* at 777.

The criterion applied by the Court in *Salfi* was not whether the "statutory provision precisely filters out those, and only those, who are in the factual position which generated the congressional concern reflected in the statute" (*ibid.*), but whether the objective standards established by the statute "bear a sufficiently close nexus with underlying policy objectives to be used as the test for eligibility" (*id.* at 772). As the Supreme Court explained in *Mathews* v. *Lucas*, *supra*, at 509, which sustained a legislative presumption similar to that in issue here:

> Such presumptions in aid of administrative functions, though they may approximate, rather than precisely mirror, the results that case-by-case adjudication would show, are permissible under the Fifth Amendment, so long as that lack of precise equivalence does not exceed the bounds of substantiality tolerated by the applicable level of scrutiny.

Section 101(b) unquestionably meets this test. Each of the statutory definitions of "parent" and "child" has been carefully drafted to carve out a specific class of aliens reasonably thought to be most likely to suffer the hardships brought about by the separation of a close family unit and, hence, to be most deserving of special immigration status.

Indeed, the considerations underlying the adoption of the "bright-line" test of Section 101(b)(1)(D) are

stronger than in *Salfi* or *Lucas*, because of the far greater incentives and opportunities for fraud in the area of immigration—a problem that has been characterized as "rampant." [22] Determinations of paternity are inherently difficult under the best of circumstances (see *Gomez* v. *Perez*, 409 U.S. 535, 538 (1973)), but they are even more so when the child has been born, perhaps many years earlier, in a foreign country. Unlike the identity of the mother, which will often appear on the birth certificate and which frequently can be corroborated by the testimony of relatives, midwives, or medical personnel, the sole evidence that a man has fathered a particular child is often the testimony of the mother, and she may not know. Indeed, two or more men may claim paternity of the same child.

It is no answer to these significant difficulties that the government may detect instances of fraud through more thorough investigative techniques. See *Fiallo* v. *Levi*, *supra*. Even if increased diligence could ferret out false applications that solution would impose "a substantial burden on the system," *Nazareno* v. *Attorney General*, *supra*, 412 F.2d at 940, and that burden would fall primarily on United States consular officials overseas, who have neither the financial resources or manpower to do the job nor the authority to elicit all relevant information from foreign agencies. Furthermore, the mere hope of prevailing at an inquiry would encourage the filing of bogus petitions that the present statutory bar to eligibility avoids. Such time consuming procedures would inevitably delay issu-

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[22] Chapman, *A Look at Illegal Immigration: Causes and Impact on the United States*, 13 San Diego L. Rev. 34, 35-36 (1975). The principal methods of immigration fraud include the use of false or altered documents and sham marriages, and the major sources of the illegal alien flow are underdeveloped countries with high—and largely illegitimate—birth rates.

ance of immigration visas to those aliens who are unquestionably qualified under the Act. As the Court concluded in *Salfi* (422 U.S. at 781):

> While it is possible to debate the wisdom of excluding legitimate claimants in order to discourage sham relationships, and of relying on a rule which may not exclude some obviously sham arrangements, we think it clear that Congress could rationally choose to adopt such a course.

While in a particular case the provisions of Section 101(b) might appear to operate inequitably, Congress acted reasonably when it decided that the price to be paid to avoid these inequities would be prohibitive and might lead to far more serious unfairness. Any system of immigration law that prevents free entry into this country from abroad necessarily imposes hardship on those who seek but who are denied admission. Neither illegitimacy nor parentage of illegitimate children is an excludable characteristic under the Act. Kim Kok Lau therefore remains free to request immigrant visa under the rules that most other aliens must satisfy. Indeed, in recognition that certain aliens may not be eligible for special immigration status but may nonetheless have a greater claim to enter the United States than other aliens, Congress has granted preferences in the receipt of visas subject to numerical limitations to relatives of United States citizens or lawful permanent residents who do not fall within Section 101(b). See Section 203(a) of the Act, 8 U.S.C. 1153(a); 1 Gordon and Rosenfield, supra, at § 2.27.[23]

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[23] If Kim Kok Lau's plight requires further assistance, relief may be sought either through private legislation or an amendment to the Act. In this regard, we note that a bill (H.R. 10993) introduced in the 94th Congress would have placed natural mothers, natural fathers, and illegitimates claiming preferential immigra-

[Footnote continued on following page]

In any event, the ultimate decision regarding which aliens should be admitted to the United States is a political one. Congress need not have allowed the admission of, much less granted an immigration preference to, any aliens; the clasifications it instead adopted in Section 101(b)(1)(D) are rationally related to the accomplishment of a legitimate immigration purpose and do not offend the Due Process Clause.

POINT III

The Board of Immigration Appeals properly held that the paternity of a visa petition beneficiary must be "legally established" under Article 15 of the Marriage Law of the People's Republic of China in order to qualify for preference status under Section 101(b)(1) of the Act.

In commencing this action before the District Court Lau complained that the Board erred as a matter of law in holding that Kim Kok Lau was not "legitimated" within the meaning of Section 101(b)(1)(C) of the

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tion status by virtue of their relationship to either parent on an equal plane under Section 101(b). At hearings held in July 1976, representatives of the Department of State and the Department of Justice stated that the Executive Branch did not object to the proposal in principal but believed strongly that the bill should be amended to include adequate safeguards to reduce the substantial possibility of fraud. Hearings on H.R. 10993, *supra*, at 7-9, 37. The history of Section 101(b), beginning with its initial restrictive provisions in 1952, its liberalization in 1957, and the more recent attempts at further liberalization—each in response to a particular problem and with due regard to the difficulties that might ensue from the change—demonstrates that any expansion of the definitions of "parent" and "child" should occur through the legislative process and that Congress should be allowed to proceed deliberately. See *Geduldig* v. *Aiello*, 417 U.S. 484, 495 (1974).

Act (A. pp. 5-6). In his motion for summary judgment below Lau instead claimed that the visa beneficiary was legitimate and entitled to preference status under Section 101(b)(1)(A) of the Act (A. pp. 138, 179). The District Court properly rejected Lau's argument that the first paragraph of Article 15 makes all children legitimate and therefore entitled to the status of a "child" under Section 101(b)(1)(A) of the Act (A. p. 195). As Judge MacMahon correctly noted Chinese law under Article 15 continues to draw a distinction between "children born out of wedlock" and those "born in lawful wedlock" (A. 195), and therefore, this situation is quite distinct than that in which a country completely abolishes the distinction and dispenses with the terms "born in wedlock" and "born out of wedlock". (A. 200) (*Matter of G . . .*, 9 I & N Dec. 518, 520). In this context, we respectfully submit that the District Court erred in concluding that the legal establishment of paternity was unnecessary to a determination of the legitimacy of a child born out of wedlock. First, by finding that the term "legally established" referred to a paternity suit, which would only be used where the father denied paternity, the District Court failed to consider whether any voluntary methods to legally establish paternity exist in China. For example, in several countries which have enactments similar to that of China, paternity may be established by the father's formal and voluntary act acknowledgment. *Matter of Dela Rosa*, I.D. 297 (B.I.A. 1974) (Panama); *Matter of K . . .*, 8 I & N Dec. 73 (B.I.A. 1958) (Poland); *Matter of G*, 9 I & N Dec 518 (B.I.A. 1961) (Hungary).

Second, if the terms "legimate" and "illegitimate" are meaningless, as the District Court found (A. 195-196), the Court's solution that the visa petitioner should go back to the Board and attempt to establish a family relationship as a matter of fact would still be insufficient as a matter of law under Section 101(b)(1)(C). (A.

196). Thus assuming that a suitable method to "legally establish" paternity normally would not be available in the present circumstances, the District Court's ultimate conclusion was incorrect. The Court conceded that the evidence presented did not establish any method by which a child born out of wedlock could be "legitimated" under Chinese law (A. 195). The petitioner had the burden of establishing eligibility for the classification, including producing evidence that legitimation had taken place under the applicable foreign law. *Matter of Annang*, Interim Decision 2248 (BIA 1973). The unfavorable consequences of failure to establish the existence of a method for achieving legitimation under the law of China should have fallen on the petitioner rather than on the Service.

The District Court evidently was concerned with the fact that there appeared to be no way for a father to legitimate his child under the law of the People's Republic of China. Nevertheless, this situation is not at all uncommon. Many countries make marriage of the parents, often an impossibility, an absolute requisite for legitimation even though the child may have been legally acknowledged and maintained by the father. See e.g., *Matter of Mandewirth*, 12 I & N Dec. 199 (BIA 1967) (Austria); *Matter of Doble-Pena*, 13 I&N Dec. 366 (BIA 1969) (Dominican Republic and Puerto Rico); *Matter of Van Pamelen*, 12 I&N Dec. 11 (BIA 1966) (Netherlands); *Matter of Maungoa*, 11 I&N Dec. 885 (BIA (1966) (Philippines); *Matter of The*, 10 I&N Dec. 744 (BIA 1964) (Indonesia). In an analogous situation, certain Islamic countries have no legal system for adoption, thus making it impossible for children who were "informally adopted" to qualify for immigration status under § 101(b)(1)(E) on the basis of the relationship to "adoptive" parents. *Matter of Mozeb*, Interim Decision

2422 (BIA 1975) (Yemen); *Matter of Bhegani*, Interim Decision 2382 (BIA 1975) (Uganda); *Matter of Boghdadi*, 12 I&N Dec. 666 (BIA 1968) (Egypt).

Although we can appreciate the District Court's concern for the predicament of someone left without apparent legal means of legitimating his child, there is simply no legal justification for the Court's result. Section 101 (b) (1) (C) clearly requires an act of legitimation under the applicable law, not just a factual determination that the relationship of father and son exists. The requirement of Section 101(b) (1) (C) that the legitimating parent have "legal custody" of the child at the time of legitimation also indicates that Congress intended to require more than a factual determination. See *Matter of Dela Rosa*, Interim Decision 2297 (BIA 1974); *Matter of Harris*, Interim Decision 2308 (BIA 1970); *cf.* Article 15 paragraph 3.

Therefore, even if the terms "legitimate" and "illegitimate" are meaningless and inapplicable to the present Chinese legal system the District Court's solution to eliminate the specific legal requirement of a formal act of legitimation under Section 101(b) (1) (C) is clearly incorrect. Instead, where the terms are meaningless and legitimation is not available under the law of child's residence or domicile, one must then look to the only alternative provided by Congress, i.e. determine whether the child has been legitimated under the law of the putative father's residence or domicile. Since legitimation may occur under Section 101(b) (1) (C) in either the law of father's, or the child's residence or domicile, this result would alleviate the predicament in those limited situations where "legitimacy" may be a meaningless concept and where legitimation is not provided for under the law of the child's domicile. The "fact finding" procedure

directed by the District Court below abolishes a specific requirement of the immigration law. As noted in Points I and II *supra*, in light of Congress' plenary power over immigration related matters, this result cannot find legal justification. Instead, in the absence of applicable law in the child's domicile, the proper and available procedure must be to look to the law of the father's domicile. Contrary to the District Court's conclusion, this result would comport with the specific Congressional mandate in Section 101(b)(1)(C) and the underlying policy of family reunification would be satisfied.[24]

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[24] Legitimation should not be so difficult or impossible in the vast majority of cases. Even where a visa petitioner fail to give reasons for his refusal to marry his child's mother we note that at least 19 states allow a putative father to legitimate his offspring even when the natural mother is married or deceased.

See Ala. Code, Title 27, § 11 (Cum. Supp. 1973) (written acknowledgement or court adjudication of paternity); Ariz. Rev Stat. Ann. § 8-601 (Cum. Supp. 1975) (every child legitimate child of natural parents); Cal. Civil Code §§ 70001, *et seq.* (West, Cum. Supp. 1976) (every child legitimate child of natural parents), Del. Code Ann., title 13 § 1301 (1975) (written acknowledgement of paternity); Ind. Stat. Ann. § 29-1-2-7(b)(1) (1972) (establishment of paternity during father's lifetime); La. Rev. Stat. Ann. § 9:391 (Cum. Supp. 1976) (written declaration of paternity); Me. Rev. Stat. Ann., title 18 § 1003 (1965) (written acknowledgement or court adjudication of paternity); Mich. Stat. Ann. § 27.3178 (153) (Cum. Supp. 1976) (written acknowledgement or court adjudication of paternity); Mich. Stat. Ann. § 27.3178 (153) (Cum. Supp. 1976) (written acknowledgement of paternity); Miss. Code Ann. § 93-17-1 (1972) (court adjudication); N.C. Gen. Stat. § 49-10 (Cum. Supp. 1975) (petitioning court by putative father); N.D. Cent. Code §14-17-01 *et seq.* (Cum. Supp. 1975) (every child legitimate child of natural parents); Ohio Rev. Code Ann. § 210:.18 (Cum. Supp. 1975) (application by putative father to court); 10 Okla. Stat. Ann. § 55 (1966) (acknowledgement of paternity); S.C. Code § 15-1384 (1962) (petitioning court by putative father); S.D. Comp. Laws § 25-6-1 (1969) (public acknowledgment of paternity and receipt

[Footnote continued on following page]

CONCLUSION

The District Court decision should be reversed.

Dated: New York, New York
March 14, 1977

Respectfully submitted,

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of child into family); Tenn. Code Ann. § 36-302 (Cum. Supp. 1975) (petitioning court); Tex. Fam. Code Ann. § 13.01 (1975) (petitioning court by putative father within one year if illegitimate birth); Utah Code Ann. § 78-30-12 (1953) (acknowledgement of paternity and receipt of child into family).

Furthermore, this result is consistent with other aspects of our immigration laws which look to our own domestic law and American legal standards to determine the immigration status of an alien. For example, in Section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9), in determining the admissibility of an alien reference is made to United States standards. See *Matter of T*, 6 I&N Dec. 508, (BIA 1955).

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State of New York)
County of New York) ss

Thomas H. Belote being duly sworn, deposes and says that he is employed in the Office of the United States Attorney for the Southern District of New York.

That on the 17th day of March 1977 he served two copies of the within Brief for Defendants-Appellants

by placing the same in a properly postpaid franked envelope addressed:

Banjamin Gim, Esquire
217 Park Row
New York, New York 10007

Benjamin Gim, Esquire
c/o Hellgate Condominium
Alta, Utah 84070

Edward Ennis, Esquire
8 West 40th Street
New York, New York

And deponent further says he sealed the said envelope s and placed the same in the mail drop for mailing in the United States Courthouse Annex, One St. Andrews Plaza, Borough of Manhattan, City of New York.

Thomas H. Belote

Sworn to before me this

18th day of March, 1977

Ralph I. Lee

RALPH I. LEE
Notary Public, State of New York
No. 41-2292838 Queens County
Term Expires March 30, 1977